

COPY

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In The Matter of Charges and)

Complaint Against)

PAUL E. CUTARELLI, M.D.,)

Respondent.)

Case No. 08-29655-3

FILED

JAN 27 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

SECOND AMENDED COMPLAINT

The Investigative Committee of the Nevada State Board of Medical Examiners, composed of Charles N. Held, M.D., Chairman, Benjamin Rodriguez, M.D., Member, and Jean Stoess, M.A., Member, at the time of the filing of the complaint and first amended complaint, by and through Lyn E. Beggs, General Counsel for the Nevada State Board of Medical Examiners, having a reasonable basis to believe that Paul E. Cutarelli, M.D., hereinafter referred to as Dr. Cutarelli, has violated the provisions of NRS Chapter 630, hereby issues its Second Amended Complaint, stating the Investigative Committee's charges and allegations, as follows:

1. Respondent was licensed in active status to practice medicine in the State of Nevada, and at all times alleged herein, was so licensed by the Nevada State Board of Medical Examiners, pursuant to the provisions of Chapter 630 of the Nevada Revised Statutes.

2. Valley Eye Center, 2931 Tenaya Way, Suite 204, in Las Vegas, Nevada originally opened in approximately August 2006 as "Clinique Optique". On or about October 5, 2006, Valley Eye Center began providing refractive surgery to correct refractive errors of the eye, more commonly known as "Lasik." The practice of Valley Eye Center was limited exclusively to the providing of Lasik. The owner and administrator of the facility was purported to be Anamika Jain, M.D.

1 Dr. Anamika Jain is not an ophthalmologist. Dr. Anamika Jain's specialty is shown in the Board's
2 records to be Rehabilitation Medicine.

3 3. In June 2008, Dr. Cutarelli began routinely performing Lasik surgeries at Valley Eye
4 Center. Dr. Cutarelli lives in Colorado and maintains no residence or presence in Nevada except that
5 he performed surgeries at Valley Eye Center. Dr. Cutarelli was not employed by Valley Eye Center;
6 instead, Dr. Cutarelli was an independent contractor with Valley Eye Center.

7 4. The normal practice at Valley Eye Center was that patients were seen throughout the
8 week for pre-operative measurements and evaluations in preparation for Lasik and to determine if
9 patients were good candidates for the surgery. Dr. Cutarelli would fly into Las Vegas on a regular
10 basis to perform Lasik procedures and provide some post-operative care. Dr. Cutarelli was not at
11 Valley Eye Center on a full-time basis. There was no other ophthalmologist at Valley Eye Center
12 during the time that Dr. Cutarelli was employed by Valley Eye Center.

13 5. Elise Millie, O.D. was a Nevada licensed optometrist employed by Valley Eye
14 Center during the time Dr. Cutarelli worked at Valley Eye Center. Dr. Millie saw patients during
15 pre-operative evaluations and provided some post-operative care. Dr. Millie and medical assistants
16 at Valley Eye Center performed pre-operative eye measurements of potential patient candidates for
17 Lasik surgery. Dr. Millie would also perform assessments of the potential patients and if appropriate,
18 would schedule patients for Lasik surgery on a day when Dr. Cutarelli would be performing surgeries
19 at Valley Eye Center.

20 6. Dr. Cutarelli would review the pre-operative measurements and assessments
21 provided to him by Dr. Millie and the medical assistants some time prior to the time scheduled for
22 surgery for patients. However, Dr. Cutarelli did not perform an independent evaluation of each
23 patient to determine whether the patient was an appropriate candidate for Lasik surgery or if any
24 contraindications to the surgery existed prior to performing the surgical procedure.

25 7. Dr. Cutarelli also failed to meet privately and independently with each patient to
26 discuss their impending surgery and to discuss the risks and benefits of the procedure prior to the
27 patients consenting to the surgical procedure, and instead would often meet with a number of patients
28 at a time in a group setting.

1
2 8. Patient N was a sixty year old female at the time she first presented to Valley Eye
3 Center on June 2, 2008. Patient N's true identity has been previously provided to Dr. Cutarelli in a
4 Patient Designation. Patient N did not see Dr. Cutarelli at the time of her first appointment, but
5 rather was seen by Dr. Millie and had some measurements performed by a medical assistant.

6 9. On June 18, 2008, Patient N returned to Valley Eye Center for her Lasik surgery.
7 Pursuant to the procedures described above, Dr. Cutarelli performed Lasik on Patient N but failed to
8 perform an independent evaluation of Patient N, nor met with her privately to discuss the surgery
9 prior to performing Lasik surgery on Patient N

10 10. During the procedure, a free flap was created on Patient N's left eye. A free flap is a
11 known complication of the procedure and is referred to in the informed consent form utilized at
12 Valley Eye Center during the time Dr. Cutarelli was employed at Valley Eye Center.

13 **Count I**

14 11. Nevada Administrative Code section 630.040 defines malpractice as "the failure of a
15 physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under
16 similar circumstances."

17 12. Nevada Revised Statute section 630.301(4) provides that malpractice is grounds for
18 initiating discipline against a licensee.

19 13. Dr. Cutarelli failed to use the reasonable care, skill, or knowledge ordinarily used
20 under similar circumstances by physicians in good standing practicing ophthalmology in Nevada
21 when he performed the Lasik surgery upon Patient N in the manner described above and
22 accordingly his care of Patient N as alleged constitutes a violation of NRS 630.301(4) and thus he
23 is subject to disciplinary action being taken against him.

24 **Count II**

25 14. All of the above paragraphs are incorporated by reference as though fully set forth
26 herein.

15. NRS 630.306(2)(b) provides that engaging in conduct which thanks the Board has determined is a violation of the standards of practice established by regulation of the Board is grounds for initiating discipline against a licensee.

16. NAC 630.230(1)(i) provides that a physician shall not fail to provide adequate supervision of a medical assistant who is employed or supervised by the physician or physician assistant.

17. Dr. Cutarelli did not provide any, let alone adequate, supervision of any of the medical assistants at Valley Eye Center as he was not at Valley Eye Center on a regular basis, rather he was present only at those times that he performed Lasik surgeries and some post-operative care. Dr. Cutarelli had no involvement of the training or determining the competency of any of the medical assistants at Valley Eye Center.

18. Accordingly Dr. Cutarelli did not provide adequate supervision to medical assistants he allowed to assist in the care of patients and thus he is in violation of NAC 630.230(1)(i) and NRS 630.306(2)(b) and is subject to discipline.

Count III

19. All of the above paragraphs are incorporated by reference as though fully set forth herein.

20. NRS 630.306(7) provides that continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field is grounds for initiating discipline against a licensee.

21. Dr. Cutarelli's acts as averred in this Complaint show a continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field while engaged in practice at Valley Eye Center for which Dr. Cutarelli is subject to discipline.

WHEREFORE, the Investigative Committee prays:

1. That the Nevada State Board of Medical Examiners hold a formal hearing on January 27, 2010;

2. That the Nevada State Board of Medical Examiners give Respondent notice of the charges herein against him, the time and place set for the hearing, and the possible sanctions against them;

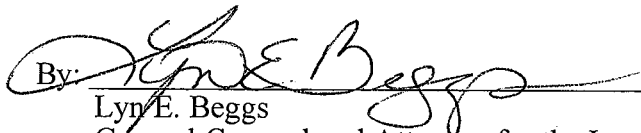
3. That the Nevada State Board of Medical Examiners determine what sanctions it determines to impose for the violation or violations committed by Respondent; and

4. That the Nevada State Board of Medical Examiners make, issue and serve on Respondent its findings of facts, conclusions of law and order, in writing, that includes the sanctions imposed; and

5. That the Nevada State Board of Medical Examiners take such other and further action as may be just and proper in these premises.

DATED this 27th day of January, 2010.

THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: 
Lyn E. Beggs
General Counsel and Attorney for the Investigative Committee

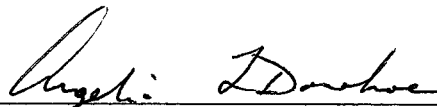
CERTIFICATE OF SERVICE

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 27th day of January 2010, I served a file copy of the SECOND AMENDED COMPLAINT, by faxing to the following:

Hal Taylor, Esq.
Fax # 775-329-1113

Jill Greiner, Hearing Officer
Fax # 775-322-8443

Dated this 27th day of January 2010.



Angelia L. Donohoe
Legal Assistant